TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 261

ELIZABETH R. GRANVILLE-SMITH, PETITIONER,

vs.

EDWARD GRANVILLE-SMITH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 5, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

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[fol. 1]

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS DIVISION OF ST. THOMAS AND ST. JOHN AT CHARLOTTE AMALIE

Civil No. 119—1953

ELIZABETH R. GRANVILLE-SMITH, Plaintiff,

vs.

EDWARD GRANVILLE-SMITH, Defendant

ACTION FOR DIVORCE

COMPLAINT—Filed March 16, 1953

Comes Now, the plaintiff, by Maas & Bailey, Esquires, her attorneys, and for her Complaint herein respectfully shows to the Court and alleges:

1. That plaintiff is a resident and inhabitant of this district and has been a resident and inhabitant thereof for more than six weeks prior to the commencement of this action;

2. That the defendant is not a resident or inhabitant of this district and his last known address is Scarsdale, N. Y.;

3. That the parties were married on September 28, 1929, at New York City, New York, and there are no children under twenty-one years of age;

4. That, from the inception of the marriage the parties found that they had no interests in common, the plaintiff being interested in a normal home and social life, in horses and riding, and being outgoing, gregarious and fond of people, and the defendant being introverted and interested solely in gardening, all to plaintiff's disappointment and unhappiness and the opening of a breach between them;

5. That the defendant made no effort to adapt himself to or to understand plaintiff's love for horses, and refused to accompany her to horseshows, and further would walk out of the room if the subject was mentioned, regardless of whether guests were present or not, all to plaintiff's dis-

[fol. 2] comfiture and resentment and the widening of the breach between them;

6. That the defendant constantly criticized plaintiff to friends of the parties, and would complain about her cooking and ridicule the way she ran the house or her taste in interior decorations, and no matter how hard the plaintiff tried to please the defendant she could never succeed, all to plaintiff's perplexity and puzzlement and the further widening of the breach between them;

7. That, as a means of showing his displeasure with and of punishing plaintiff, the defendant would give plaintiff the silent treatment, and, on one occasion, six months elapsed before defendant saw fit to speak to plaintiff, all to plaintiff's misery and unhappiness and the further widening of the breach between them;

8. That the defendant objected so vigorously to plaintiff's entertaining her friends in the marital home, and would go out and leave the house when he found them there, that these friends soon dropped plaintiff, and plaintiff ceased to invite her friends to the home of the parties, all to plaintiff's irritation and annoyance and the further widening of the breach between them;

9. That the defendant would come to the table directly from gardening without washing or changing his clothes, and neither remonstrances nor pleadings were of any avail in inducing him to change this disagreeable habit, all to plaintiff's vexation and frustration and the further widening of the breach between them;

10. That the defendant was never able to live within the budget of the parties, spending money high, wild and handsome, and consequently the parties were always in debt, all to plaintiff's worry and concern and the further widening of the breach between them;

11. That the plaintiff was not permitted to evince any interest in the defendant's business, and the subject was forbidden as a type of conversation, and further would allow plaintiff only a maximum of ten minutes in which to discuss her business problems with him, and on many occasions [fol. 3] would refuse to listen to her at all, all to plaintiff's hurt and depression and the further widening of the breach between them;

12. That, on those occasions when the defendant felt the need of advice he would scorn plaintiff's thoughts and com-

ments and would choose to take the advice of outsiders in preference to that of plaintiff, all to plaintiff's mortification and grief and the further widening of the breach between them;

13. That the defendant frequently drank to excess, as a result of which his behaviour in company would be embarrassing to plaintiff, all to plaintiff's discomfiture and humiliation and the further widening of the breach between them;

14. That the parties had no physical relations for several months prior to their separation, to the breakdown of all ties between them;

15. That the parties separated on or about August 5, 1952, and have not since lived together as husband and wife;

16. That, by reason of all of the foregoing, there exists between the parties a state of irreconcilable incompatibility without any fault on the part of the plaintiff;

Wherefore, plaint ff prays this Court for (1) a decree of divorce absolute, and (2) such other and further relief as to the Court may seem just and proper in the premises.

(S.) Elizabeth R. Granville-Smith, Plaintiff. (S.) Maas & Bailey, Attorneys for Plaintiff.

[fol. 4] *Duly sworn to by Elizabeth R. Granville-Smith. Jurat omitted in printing.*

[fol. 5] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

[Title omitted]

AFFIDAVIT

I, Elizabeth R. Granville-Smith, the plaintiff in the above entitled action, do hereby depose and state:

1. That to the best of my knowledge my husband, Edward Granville-Smith, the defendant herein, is not residing in this district.

2. That his last address known to me is Scarsdale, N. Y.

Dated: March 16, 1953.

(S.) Elizabeth R. Granville-Smith.

Subscribed and sworn to before me by the aforesaid Elizabeth R. Granville-Smith on this 16th day of March A. D. 1953. (S.) G. de Castro, Notary Public.

[fol. 6] In the District Court of the Virgin Islands

[Title omitted]

Motion for Service Outside the Jurisdiction—March 16, 1953

Comes Now, the plaintiff, by her attorneys, Maas & Bailey, Esquires, and respectfully shows the Court:

That defendant does not reside in this district, being a resident of Scarsdale, N. Y.

Wherefore, it is respectfully requested that the Court grant an order directing service of process by publication in the district or personally at the place of his residence.

Dated: March 16, 1953.

(S.) Maas & Bailey, Attorneys for Plaintiff.

[fol. 7] In the District Court of the Virgin Islands

[Title omitted]

Order Granting Service Outside the Jurisdiction—March 16, 1953

Upon reading and filing the verified complaint in the above entitled action and motion of plaintiff's attorneys requesting that the Court grant an order directing service of process by publication in the district or personally at the place of defendant's residence; and

It appearing to the satisfaction of the Court that defendant does not reside within the jurisdiction, it is hereby

Ordered that service of process on defendant herein may be made by publication of summons herein in the Daily News newspaper, St. Thomas, Virgin Islands, once a week for four consecutive weeks and by mailing a copy of the summons and complaint herein, and of this order, to the defendant at his last known address, or by effecting personal service thereof on defendant outside the jurisdiction.

In witness whereof, I have hereunto set my hand and the seal of the Court on this 16th day of March, A. D. 1953.

(S.) George A. Mena, District Court Commissioner.

[fol. 8] In the District Court of the Virgin Islands

[Title omitted]

Summons

The President of the United States:

To Edward Granville-Smith, Scarsdale, N. Y., Defendant:

Within the time limited by law (see note below) you are hereby required to appear before this Court and answer to a complaint filed against you in this action; and in case of your failure to appear or answer, judgment by default will be taken against you as demanded in the complaint, for divorce.

Witness my hand and the Seal of the Court this 16th day of March, 1953.

(S.) George A. Mena (Clerk of the Court).

Maas and Bailey, Attorneys and Counselors at Law, P. O. Box 509 Charlotte Amalie, St. Thomas, Virgin Islands.

Note: The defendant, if served personally, is required to file his answer or other defense with the Clerk of this Court and to serve a copy thereof upon the plaintiff's attorney within twenty (20) days after service of this summons, excluding the date of service. The defendant, if served by publication or by personal service outside of the jurisdiction, is required to file his answer or other defense with the Clerk of this Court, and to serve a copy thereof upon the attorney for the plaintiff within thirty (30) days after the completion of the period of publication or personal service outside of the jurisdiction.

[fol. 9] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

[Title omitted]

APPEARANCE AND ANSWER—Filed March 19, 1953

Comes now Edward Granville-Smith, the defendant, by Warren H. Young, Esq., his attorney, appears and waives service of summons in this action for divorce, acknowledges receipt of a copy of the complaint filed herein and for his answer thereto, alleges:

1. For lack of sufficient knowledge and information upon which to form a belief as to the allegation contained in paragraph 1 of the complaint, he denies said allegation.
2. He admits the allegations contained in paragraphs 2 and 3 of the complaint.
3. He denies all other allegations of the complaint.

(S.) Edward Granville-Smith, Warren H. Young, Esq., Attorney for defendant.

[fol. 10] *Duly sworn to by Edward Granville-Smith. Jurat omitted in printing.*

[fol. 11] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

WAIVER AND CONSENT—Filed March 19, 1953

Comes now Edward Granville-Smith, defendant, by Warren H. Young, Esq., his attorney, and offers no objection to the immediate hearing of the application of the plaintiff without further notice to the defendant and consents and agrees to the hearing of this cause as if by default, but being represented at such hearing by his attorney, and consents to the making and entry of such findings of fact and conclusions of law and decree as to the Court may seem just and reasonable.

(S.) Edward Granville-Smith.

Duly sworn to by Edward Granville-Smith. Jurat omitted in printing.

[fol. 12] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

[Title omitted]

RETAINER AND POWER OF ATTORNEY—March 17, 1953

Know All Men by these Presents:

That I, Edward Granville-Smith, of Scarsdale, New York, hereby retain and authorize Warren H. Young, Esq., of Christiansted, St. Croix, Virgin Islands, to appear in my behalf and represent me in the above entitled action; and by these presents, I do make, constitute and appoint the said Warren H. Young, Esq., my true and lawful attorney at law and in fact, to act for me and represent me in any suit for divorce which may be brought against me in the Virgin Islands by my wife, Elizabeth R. Granville-Smith, with full power and authority to do any and all acts and things that may be exercised and done by an attorney with full power of substitution, including the authority to accept service of summons and complaint and other process in my behalf, to demur, answer, or otherwise plead to the complaint or any amended complaint, and to waive time for service thereof, and the filing of findings of fact and conclusions of law and decree, as in the judgment of my said attorney, may be best and as fully to all intents and purposes as I could do if I were present personally.

In witness whereof, I have hereunto set my hand this 17th day of March, 1953.

(S.) Edward Granville-Smith.

[fol. 13] STATE OF NEW YORK,
County of New York, ss:

On this 17th day of March, 1953, before me the undersigned, a Notary Public, personally appeared Edward Granville-Smith, known to me to be the person described in and who executed the above and foregoing instrument, and he acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein stated.

In witness whereof, I have hereunto set my hand and

affixed my official seal the day and year herein first above written.

(S.) Katherine S. Crawshaw, Notary Public. Notary Public in the State of N. Y. Qualified in Kings County. No. 24-5853650. Cert. filed in N. Y. & Kings. Comm. expire 3/30/54.

[fol. 14] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

[Title omitted]

TRANSCRIPT OF TESTIMONY—March 20, 1953

Elizabeth R. Granville-Smith, called as a witness in her own behalf, appeared before the District Court Commissioner and, after being duly sworn on oath, testified as follows:

Direct examination.

Mr. Bailey:

Q. What is your name?

A. Elizabeth R. Granville-Smith.

Q. Are you the plaintiff in this action for a divorce against your husband, Edward Granville-Smith?

A. I am.

Q. Are you a resident and an inhabitant of the Virgin Islands?

A. Yes, I am.

Q. Have you been a resident and an inhabitant of the Virgin Islands for more than six weeks prior to the commencement of this action?

A. Yes, I have.

Q. When did you become a resident and an inhabitant of the Virgin Islands?

A. February 1, 1953.

Q. Have you been a resident and an inhabitant of the Virgin Islands continuously and continually ever since?

A. I have.

[fol. 15] Q. During that time have you at any time or for any reason ever left the Virgin Islands?

A. No, I have not.

Q. Now, except for this action for a divorce, is there any other action of a marital nature pending anywhere else between you and your husband?

A. No, there is not.

Q. Where does he presently reside?

A. Scarsdale, New York.

Q. When and where were you married?

A. New York City, on September 28, 1929.

Q. Are there any children under twenty-one years of age?

A. No, there are none.

* * * * * * *

Q. Now, in this action, if a divorce is granted, are you asking for any alimony?

A. No, I am not.

Q. And you understand that by not asking for it at this time you may not ask for it at any future time?

A. I do.

Mr. Bailey: Do you have any questions, Mr. Young?

Mr. Young: I have no questions, Mr. Bailey.

Mr. Bailey: That is our case.

* * * * * * *

The Commissioner: Let the record show that the plaintiff appears personally and is represented by Maas and Bailey, Attorney Bailey of counsel; that the defendant did not appear personally, but was represented by Attorney Warren H. Young who filed his Retainer and Power of Attorney, as well as the defendant's Waiver and Consent, Appearance and Answer in which Answer he admits the allegations contained in paragraphs 2 and 3 of the complaint and denies all other allegations of the complaint. A divorce will be recommended.

Dated at Charlotte Amalie, Saint Thomas, Virgin Islands, this 20th day of March, 1953, and certified to be a true and correct Transcript of the Testimony in the above-entitled case.

(S.) Leon A. Mawson, Official Court Reporter.

[fol. 16] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF DISTRICT COURT COMMISSIONER—March 20, 1953

This matter having come on to be heard this 20th day of March, 1953, and the plaintiff having appeared in person and by her attorneys, Maas & Bailey, Esquires, (William W. Bailey, Esquire, of counsel), and the defendant appearing generally by filing his verified Waiver and Consent and his verified Appearance and Answer, and being represented by his attorney Warren H. Young, Esquire, who filed his verified Retainer and Power of Attorney, and the Court having jurisdiction of the parties and of the cause of action, and the matter having been referred to the District Court Commissioner to hear and report, pursuant to statute, and after hearing all of the evidence adduced on behalf of the plaintiff and after hearing the plaintiff testify under oath, and considering all of the evidence submitted and after due deliberation thereon, I find as follows:

FINDINGS OF FACT

That the plaintiff is and has been a bona fide resident and inhabitant of this district for more than six weeks prior to the commencement of this action; that the parties were married on the 28th day of September, 1929, at New York City, N. Y., and there are no children under twenty-one years of age; that a state of incompatibility of temperament exists between the parties through no fault of the plaintiff;

[fols. 17-19] CONCLUSIONS OF LAW

That I conclude as a matter of law that a state of incompatibility of temperament exists between the parties, which entitles the plaintiff to a decree of divorce absolute;

In Witness Whereof, I have hereunto set my hand and caused the seal of the Court to be affixed this 20th day of March, A.D., 1953.

(S.) George A. Mena, District Court Commissioner.

[fol. 20] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

[Title omitted]

MOTION FOR DECREE—June 21, 1954

Comes now plaintiff, by her substituted attorneys, Dudley, Hoffman & McGowan, and respectfully shows to the Court:

That hitherto, March 16, 1953, plaintiff filed her petition for a decree of divorce from the defendant herein on the ground of incompatibility of temperament;

That thereafter, March 19, 1953, defendant appeared generally by filing his verified Appearance and Answer, and verified Waiver and Consent to the immediate hearing of plaintiff's application;

That thereafter and on March 20, 1953 plaintiff's application was heard by the District Court Commissioner, at which hearing defendant was represented by his attorney, Warren H. Young, Esq. who filed his verified Retainer and Power of Attorney;

That thereafter the District Court Commissioner recommended in his Findings of Fact and Conclusions of Law, dated March 20, 1953, that plaintiff's application be granted.

That notwithstanding said recommendation said decree has not been granted;

Wherefore, plaintiff respectfully requests that a decree [fol. 21] of divorce be issued to plaintiff in accordance with the Findings of Fact and Conclusions of Law heretofore filed by the District Court Commissioner in the within action.

Dated, Charlotte Amalie, V. I., June 21, 1954.

(S.) Louis Hoffman, Dudley, Hoffman & McGowan, Attorneys for Plaintiff, Office and P. O. Address: Charlotte Amalie, V. I.

[fol. 22] IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

[Title omitted]

Transcript of Appearance on Motion—June 21, 1954

APPEARANCES:

Louis Hoffman, Esq., Attorney for Plaintiff.
Warren H. Young, Esq., Attorney for Defendant.

Mr. Hoffman: If your Honor please, this is a motion for the confirmation of the recommendation made by the District Court Commissioner in the matter of Granville-Smith v. Granville-Smith, Civil No. 119-1953, in which a Decree of Divorce was recommended. This matter was heard on the 20th day of March, 1953, and the Findings of Fact and Conclusions of Law executed by the Commissioner on the 20th day of March, 1953.

The Court: I have looked at the Transcript of the Record herein and I would like to ask whether you have any more evidence to offer on the question of domicile.

Mr. Hoffman: No, sir.

[fols. 23-36] The Court: It is my opinion, after examining the record that the proof herein is not sufficient to establish domicile in accordance with the directive of the case of Burch v. Burch, decided by the Court of Appeals of this Circuit.

Mr. Hoffman: We respectfully call attention to Sec. 9a of the Divorce Ordinance amended May 29, 1953 which makes six weeks' residence on the part of the plaintiff prior to the filing of the complaint prima facie evidence of domicile.

The Court: I have seen that new statute, Mr. Hoffman, and I doubt that it is sufficient to confer jurisdiction on this Court to grant this divorce and so rule.

Mr. Hoffman: We respectfully except, if your Honor please, and hereby serve notice of appeal to the United States Court of Appeals for the Third Circuit.

The Court: Very well, I think this is a very important question. I do not know whether the Court of Appeals can hear it immediately or not, but if you wish me to, I will certify its importance to the Court of Appeals so that you may get some determination on it as soon as possible.

The Court: Let the record show then that this Court does certify this matter to the Court of Appeals as being a matter of importance and urgency.

Dated at Charlotte Amalie, St. Thomas, Virgin Islands, this 21st day of June, 1954, and certified to be a true and correct transcript of the Record in the above entitled case.

(S.) Leon A. Mawson, Official Court Reporter.

[fol. 37] In the District Court of the Virgin Islands

Civil No. 119—1953

Elizabeth R. Granville-Smith, Plaintiff,

vs.

Edward Granville-Smith, Defendant

Action for Divorce

Order Denying Motion for Decree and Dismissing Cause—June 21, 1954

This matter came on for hearing June 21, 1954 on the Motion of Dudley, Hoffman & McGowan, substituted attorneys for plaintiff, requesting confirmation of Findings of Fact and Conclusions of Law heretofore filed herein by George A. Mena, District Court Commissioner, the 20th day of March, 1953, recommending the granting of a decree of divorce to plaintiff from defendant, on the ground of Incompatibility of Temperament.

Plaintiff appeared by her attorneys, Dudley, Hoffman & McGowan (Louis Hoffman, Esq., of counsel).

Defendant appeared by his attorney, Warren H. Young, Esq.

After hearing the argument of counsel on the Motion, the Court being satisfied in the premises, and on the basis of opinion heretofore rendered June 13, 1953 in the matter of *Alton* v. *Alton*, Civil No. 145-1953, it is hereby

Ordered, that said Motion be and the same is hereby denied, and the Complaint herein dismissed for lack of jurisdiction over the plaintiff herein.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Court to be affixed this 21st day of June, 1954.

(S.) Herman E. Moore, Judge.

Attest: (S.) George A. Mena, Clerk.

[fols. 38-43] In the District Court of the Virgin Islands

[Title omitted]

Notice of Appeal—June 21, 1954

To George A. Mena, Esq., Clerk of the District Court; Warren H. Young, Esq., Attorney for Defendant:

Notice Is Hereby Given that Elizabeth R. Granville-Smith, plaintiff in the above entitled action, hereby appeals to the United States Court of Appeals for the Third Circuit from the Order of the District Court, dated June 21, 1954, entered herein, dismissing the complaint herein for lack of jurisdiction.

Dated, Charlotte Amalie, V. I., June 21, 1954.

(S.) Louis Hoffman, Dudley, Hoffman & McGowan, Attorneys for Plaintiff, Office and P. O. Address: Charlotte Amalie, V. I.

Proof of Service—(Omitted in Printing)

[fol. 44] IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11,354

ELIZABETH R. GRANVILLE-SMITH, Appellant,

v.

EDWARD GRANVILLE-SMITH

Appeal from the District Court of the Virgin Islands, Division of St. Thomas and St. John

Submitted June 25, 1954

Before Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges

OPINION OF THE COURT—Filed July 13, 1954

Per CURIAM:

This case is the same with regard to all operative facts and principles of law as Alton v. Alton, 207 F. 2d 667 (C. A. 3, 1953), cert. granted, 347 U. S. 911 (1954); proceedings dismissed because moot, June 1, 1954. That decision must govern this. While individual members of the Court have not modified their views as set out in the opinions in that [fol. 45] case, all recognize the authority of a decision rendered after due consideration by the Court en banc.

The judgment of the district court will be affirmed.

[fol. 46] In United States Court of Appeals for the Third Circuit

No. 11,354

Elizabeth R. Granville-Smith, Appellant,

vs.

Edward Granville-Smith

Present: Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges.

Judgment—July 13, 1954

This cause came on to be heard on the record from the District Court of the Virgin Islands, Division of St. Thomas and St. John, and was submitted on brief.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

Attest:

Harriet G. Humphrys, Deputy Clerk.

July 13, 1954.

[File endorsement omitted.]

[fols. 47-49] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 50] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 261

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8184)